

### Subpart B—Freedom of Information Act

#### § 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

#### § 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system or through the FEDERAL REGISTER or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

#### § 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review*, for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

#### § 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.* (1) Requests for any record (including policy) ordinarily will be

## § 802.6

processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope "Freedom of Information Request."

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (*see* § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than \$25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your

## 28 CFR Ch. VIII (7-1-08 Edition)

request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

### § 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

### § 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at